

§ 1.401(a)(9)-6T

26 CFR Ch. I (4-1-03 Edition)

Excess of age of employee over age of beneficiary	Applicable percentage
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62
29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

(3) *Example.* This paragraph (c) is illustrated by the following example:

Example. Distributions commence on January 1, 2003 to an employee (Z), born March 1, 1937, after retirement at age 65. Z's daughter (Y), born February 5, 1967, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of \$500 a month to Z and upon Z's death of \$500 a month to Y, i.e., the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. There is no provision under the option for a change in the projected payments to Y, and corresponding increase to Z, as of April 1, 2008, Z's required beginning date. Accordingly, under A-10 of this section, compliance with the rules of this section is determined as of the annuity starting date. Consequently, as of January 1, 2003 (the annuity starting date) the plan does not satisfy the MDIB requirement because, as of such date, the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 60 percent of Z's monthly payment (the maximum percentage for a difference of ages of 30 years).

(d) *Period certain and annuity features.* If a distribution form includes a life annuity and a period certain, the amount of the annuity payments payable to the beneficiary need not be reduced during the period certain, but in the case of a joint and survivor annuity with a period certain, the amount of the annuity payments payable to the

beneficiary must satisfy paragraph (c) of this A-2 after the expiration of the period certain.

(e) *Deemed satisfaction of incidental benefit rule.* Except in the case of distributions with respect to an employee's benefit that include an ancillary death benefit described in paragraph A-1(e) of this section, to the extent the incidental benefit requirement of § 1.401-1(b)(1)(i) requires a distribution, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution incidental benefit requirement of this A-2. If the employee's benefits include an ancillary death benefit described in paragraph A-1(e) of this section, the benefits must be distributed in accordance with the incidental benefit requirement described in § 1.401-1(b)(1)(i) and must also satisfy the minimum distribution incidental benefit requirement of this A-2.

Q-3. How long is a period certain under a defined benefit plan permitted to extend?

A-3. (a) *Distributions commencing during the employee's life.* The period certain for any annuity distributions commencing during the life of the employee with an annuity starting date on or after the employee's required beginning date generally is not permitted to exceed the applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9) for the calendar year that contains the annuity starting date. See A-10 for the rule for annuity payments with an annuity starting date before the required beginning date. However, if the employee's sole beneficiary is the employee's spouse and the annuity provides only a period certain and no life annuity, the period certain is permitted to be as long as the joint life and last survivor expectancy of the employee and the employee's spouse, if longer than the applicable distribution period for the employee.

(b) *Distributions commencing after the employee's death.* (1) If annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(B)(iii) or (iv)), the period certain for any distributions commencing after death

cannot exceed the applicable distribution period determined under A-5(b) of § 1.401(a)(9)-5 for the distribution calendar year that contains the annuity starting date.

(2) If the annuity starting date is in a calendar year before the first distribution calendar year, the period certain may not exceed the life expectancy of the designated beneficiary using the beneficiary's age in the year that contains the annuity starting date.

Q-4. Will a plan fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased from an insurance company?

A-4. (a) *General rule.* A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased with the employee's benefit by the plan from an insurance company, as long as the payments satisfy the requirements of this section. If the annuity contract is purchased after the required beginning date, the first payment interval must begin on or before the purchase date and the payment required for one payment interval must be made no later than the end of such payment interval. If the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9).

(b) *Permitted increases.* In the case of an annuity contract purchased from an insurance company with an employee's account balance under a defined contribution plan or under a section 403(a) annuity plan, if the total future expected payments (determined in accordance with paragraph (c)(3) of this A-4) exceed the account value being annuitized, the payments under the annuity will not fail to satisfy the non-increasing payment requirement in A-1(a) of this section merely because the payments are increased in accordance with one or more of the following—

(1) By a constant percentage, applied not less frequently than annually;

(2) To provide a payment upon the death of the employee equal to the excess of the account value being annuitized over the total of payments before the death of the employee.

(3) As a result of dividend payments or other payments that result from actuarial gains, but only if actuarial gain is measured no less frequently than annually and the resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);

(4) As a final payment under the annuity contract, but only if the payment does not exceed the total future expected payments as of the date of the payment; or

(5) As a partial distribution under the contract, but only if the contract provides for a final payment as of the date of partial distribution that satisfies paragraph (b)(4) of this A-4 and the future payments under the contract are reduced by multiplying the otherwise applicable future payments by a fraction, the numerator of which is the excess of that final payment over the amount of the partial distribution and the denominator of which is the amount of that final payment. For the purpose of determining this ratio, the denominator is reduced by the amount of any regularly scheduled payment due on the date of the partial distribution.

(c) *Definitions.* For purposes of this A-4, the following definitions apply—

(1) Account value being annuitized means the value of the employee's entire interest (within the meaning of A-12 of this section) being annuitized (valued as of the date annuity payments commence) or, in the case of a defined contribution plan, the value of the employee's account balance used to purchase an immediate annuity under the contract.

(2) Actuarial gain means the difference between the actuarial assumptions used in pricing (i.e., investment return, mortality, expense, and other similar assumptions) and the actual experience with respect to those assumptions. Actuarial gain also includes differences between the actuarial assumptions used in pricing when an annuity

was purchased and actuarial assumptions used in pricing annuities at the time the actuarial gain is determined.

(3) Total future expected payments means the total future payments to be made under the annuity contract as of the date of the determination, calculated using the Single Life Table in A-1 of § 1.401(a)(9)-9 (or, if applicable, the Joint and Last Survivor Table in A-3 of in § 1.401(a)(9)-9) for annuitants who are still alive, without regard to any increases in annuity payments after the date of determination, and taking into account any remaining period certain.

(d) *Examples.* This A-4 is illustrated by the following examples:

Example 1. A participant (Z1) in defined contribution plan X attains age 70 on March 5, 2005, and thus, attains age 70½ in 2005. Z1 elects to purchase annuity Contract Y1 from Insurance Company W in 2005. Contract Y1 is a life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent. Subsequent payments are determined by multiplying the prior year's payment by a fraction the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment and the denominator of which is 1 plus the AIR during that period. The value of Z1's account balance in Plan X at the time of purchase is \$105,000, and the purchase price of Contract Y1 is \$105,000. Contract Y1 provides Z1 with an initial payment of \$7,200 at the time of purchase in 2005. The total future expected payments to Z1 under Contract Y1 are \$122,400, calculated as the initial payment of \$7,200 multiplied by the age 70 life expectancy of 17. Because the total future expected payments on the purchase date exceed the account value used to purchase Contract Y1 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z1 from Contract Y1 meet the requirements under paragraph (b)(3) of this A-4.

Example 2. A participant (Z2) in defined contribution plan X attains age 70 on May 1, 2005, and thus, attains age 70½ in 2005. Z2 elects to purchase annuity Contract Y2 from Insurance Company W in 2005. Contract Y2 is a participating life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the

year after the year for which the actuarial gain is measured over the remaining lifetime and period certain, i.e., the period certain ends at the same time as the original period certain. Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year. The value of Z2's account balance in Plan X at the time of purchase is \$265,000, and the purchase price of Contract Y2 is \$265,000. Contract Y2 provides Z2 with an initial payment of \$16,000 in 2005. The total future expected payments to Z2 under Contract Y2 are calculated as the annual initial payment of \$16,000 multiplied by the age 70 life expectancy of 17 for a total of \$272,000. Because the total future expected payments on the purchase date exceeds the account value used to purchase Contract Y2 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements under paragraph (b)(3) of this A-4.

Example 3. The facts are the same as in *Example 2* except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2. Because the dividend accumulation option permits dividends to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example 2*, the dividend accumulation option does not meet the requirements of paragraph (b)(3) of this A-4. Neither does the dividend accumulation option fit within any of the other increases described in paragraph (b) of this A-4. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-4 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. The facts are the same as in *Example 2* except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2. Because this option permits payments as a result of actuarial gain to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example*

2, the option does not meet the requirements of paragraph (b)(3) of this A-4. Neither does the option fit within any of the other increases described in paragraph (b) of this A-4. Accordingly, the addition of the option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-4 and thus fail to satisfy the requirements of section 401(a)(9).

Example 5. A participant (Z3) in defined contribution plan X attains age 70½ in 2005. Z3 elects to purchase annuity contract Y3 from Insurance Company W. Contract Y3 is a life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under A-3(a) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is \$110,000, and the purchase price of Contract Y3 is \$110,000. Contract Y3 provides Z3 with an initial payment of \$6,000 at the time of purchase in 2005. The total future expected payments to Z3 under Contract Y3 are \$120,000, calculated as the initial annual payment of \$6,000 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the account value used to purchase Contract Y3 and payments only increase as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements under paragraph (b)(1) of this A-4.

Example 6. The facts are the same as in *Example 5* except that the initial payment is \$5,400 and the annual rate of increase is 4 percent. In this example, the total future expected payments are \$108,000, calculated as the initial payment of \$5,400 multiplied by the period certain of 20 years. Because the total future expected payments are less than the account value of \$110,000 used to purchase Contract Y3, distributions received by Z3 do not meet the requirements under paragraph (b) of this A-4 and thus fail to meet the requirements of section 401(a)(9).

Example 7. (i) A participant (Z4) in defined contribution Plan X attains age 78 in 2005. Z4 elects to purchase Contract Y4 from Insurance Company W. Contract Y4 provides for fixed annual payments for 20 years (which does not exceed the maximum period certain permitted under A-3(a) of this section) and provides that, on any payment date, before receiving his payment due on that date, Z4 may cancel Contract Y4 and receive as a final payment an amount equal to his remaining payments discounted with interest at 4 percent. The value of Z4's account balance in Plan X at the time of purchase is \$500,000, and the purchase price of Contract Y4 is \$500,000. Contract Y4 provides Z4 with an initial payment in 2005 of \$35,376.

(ii) Under Contract Y4, the amount that Z4 could receive upon cancellation of Contract

Y4 as a final payment, for all possible cancellation dates, will always be less than the total future expected payments on such cancellation date. This is so because the total future expected payments on any such cancellation date is equal to the remaining payments on such date, not discounted, an amount always greater than the final payment amount of these same remaining payments, discounted at 4 percent.

(iii) The total future expected payments to Z4 under Y4 are \$707,520, calculated as the annualized initial payment of \$35,376 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the account value used to purchase Contract Y4 and it is not possible for a final payment under Contract Y4 to ever exceed the total future expected payments on the day of such final payment, distributions received by Z4 under Contract Y4 meet the requirements under paragraph (b)(4) of this A-4.

(iv) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day he was due to receive his eleventh payment, his contractual final payment would be \$298,408 (including the \$35,376 he was due to receive on that day) which is less than his total future expected payments on that date (\$353,760). These amounts are determined as follows. On the day Z4 was to receive his eleventh payment, Z4 was entitled to receive ten future payments of \$35,376 (including the payment he was due to receive on that day). The discounted value of an annuity of ten payments of \$35,376, with the first payment due on the date of the calculation of the discounted value, and a discount rate of 4 percent, is \$298,408. The product of the payment amount of \$35,376 multiplied by 10, the number of future payments to which Z4 would be entitled on the day Z4 was to receive the eleventh payment, is \$353,760.

Example 8. (i) The facts are the same as in *Example 7* except that the annuity provides an option for partial distributions of less than the final payment amount (the maximum distribution), with payments following such a partial distribution reduced by multiplying the otherwise applicable future payments by a fraction, the numerator of which is the excess of the final payment amount over the amount of the partial distribution and the denominator of which is the amount of that final payment. For the purposes of determining this ratio, the denominator is reduced by the amount of any regularly scheduled payment due on the date of partial distribution. This partial distribution option meets the requirements of paragraph (b)(5) of this A-4.

(ii) To illustrate the workings of this partial distribution option, assume Z4 takes a distribution of \$100,000 on the date he was to receive his eleventh payment of \$35,376. In such a case, under this partial distribution